

76

HC



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER OF PATENTS AND TRADEMARKS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/028,113 | 12/20/2001 | Kenneth Ouriel | CCF-5814 | 3220 |

26294 7590 05/21/2003

TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.
 526 SUPERIOR AVENUE, SUITE 1111
 CLEVELAND, OH 44114

EXAMINER

THALER, MICHAEL H

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3731

DATE MAILED: 05/21/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/028,113

Applicant(s)
Ouriel et al.

Examiner
Michael Thaler

Art Unit
3731



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 23, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above, claim(s) 68-75 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 6) ☐ Other: _____

Art Unit: 3731

Claims 68-75 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 5.

Claims 14, 18, 20, 34, 38, 41-56, 64 and 66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 14, lines 2-3, "pairs axially aligned barbs" is not understood. Claim 34 has the same problem. In claim 18, line 3, "tapered...outward" is self contradictory since "tapered", by definition, involves a reduction rather than an increase in the width of an object. Claims 20, 38, 40, 53, 55, 64 and 66 have the same problem. In claim 41, line 14, "for" should be inserted after "means" in order to make it clear that the vasculature is not part of the claimed combination.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3731

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 6-14, 41, 43-49 and 57-60 are rejected under 35 U.S.C. 102(b) as being anticipated by Pinheiro (5,851,228). Pinheiro, in figure 5, shows first end (the right end as shown in the figure) having means 40 for laterally supporting the first end (col. 4, lines 45-59), furcated second end (the left end as shown in the figure) including at least two branches, each of the two branches including a longitudinal support means 49 and anchoring means 20a, 25. As to claims 6, 44 and 57, struts 40 constitute a radially expandable stent.

Claims 2-5, 21-34 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinheiro (5,851,228). As to claim 2 for example, Pinheiro fails to disclose that the inner surface facilitates non-turbulent flow. However, it is well known in this art that supporting stents may be fixed to the outside rather than the inside of grafts with the self-evident advantage of providing smoother flow within the graft. It would have been obvious to so locate the Pinheiro supporting means so that it too would have this advantage. As to claim 21 for example, Pinheiro fails to disclose at least three branches. However, it is well known in this art to provide at least three branches in grafts so that various blood

Art Unit: 3731

vessels may be connected. It would have been obvious to provide at least three branches in the Pinheiro graft so that it too would have this advantage.

Claims 6, 15-17, 19, 26, 35-37, 39, 44, 50-52, 54, 56, 61-63, 65 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinheiro (5,851,228) in view of Anidjar et al. (6,036,723). As to claims 6, 26, 44 and 57, assuming *arguendo* that struts 40 of Pinheiro are not considered to constitute a stent, Anidjar et al. teach that the support means for a graft may include one or more stents (col. 6, lines 39-40) and that this arrangement has the advantage of ensuring a resistance to crushing of the graft (col. 6, lines 50-53). It would have been obvious to replace or augment struts 40 of Pinheiro with stents so that the Pinheiro graft would also have this advantage. As to claim 15, for example, Pinheiro fails to disclose outflow limbs. However, Anidjar et al. teaches that outflow limbs 10 should be attached to a bifurcated stent/graft 1 so that the flow passageways within the assembly reach the ileac arteries (col. 8, lines 48-54 and col. 9, lines 53-60). It would have been obvious to including outflow limbs with the Pinheiro bifurcated stent/graft so that it too would have this advantage.

Claims 18, 20, 38, 40, 53, 55, 64 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinheiro (5,851,228) in view of Anidjar et al. (6,036,723) as applied to claims 15, 35, 50

Art Unit: 3731

and 61 above, and further in view of Goicoechea et al. (6,051,020). Goicoechea et al. and Anidjar et al. fail to disclose a taper on the outflow limbs. However, Goicoechea et al. teach that the ends of outflow limbs and other vascular graft members (e.g. at 40 or 72) should be tapered (at 42 or 82) in order to facilitate connection with other grafts or natural vessels (col. 11, lines 45-49 and col. 12, lines 12-15). It would have been obvious to make the ends of the Anidjar et al. outflow limbs (incorporated into the Pinheiro device) tapered so that it too would have this advantage.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Application/Control Number: 10/028,113

Page 6

Art Unit: 3731

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht
May 14, 2003



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731